

NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Church of the Eagle and the Condor, et al.,

Plaintiffs,

v.

James McHenry, et al.,

Defendants.

No. CV-22-01004-PHX-SRB

ORDER

The Court now considers Plaintiffs' Motion to Incorporate Settlement Agreement In Order and for Retention of Jurisdiction ("Motion"). (Doc. 70, ("Mot.")) The Court will deny the Motion.

I. BACKGROUND

This case arises out of Plaintiffs' importation and use of ayahuasca for religious purposes. (*See generally* Doc. 1, Compl.)

On April 17, 2024, the parties filed a Notice of Settlement, which specified that the parties would have 60 days to negotiate attorneys' fees and costs, and that the issue would be submitted to the Court if the parties were unable to come to an agreement. (Doc. 49 at 1.) After 60 days, Plaintiffs filed a Motion for Award of Attorneys' Fees and Related Non-Taxable Expenses ("Motion for Attorneys' Fees"), requesting an award of fees and costs in the amount of \$2,149,496.30. (Doc. 51 at 1, 16.)

On July 30, 2024, the Court denied the Motion for Attorneys' Fees,

1 explaining that “[b]ecause the Court never ‘placed its stamp of approval’ on the
 2 settlement agreement before Plaintiffs filed their Motion [for Attorneys’ Fees], the
 3 settlement agreement lack[ed] the requisite judicial imprimatur to confer prevailing
 4 party status on Plaintiffs.” (See Doc. 69, 7/30/2024 Order at 4 (first quoting *Citizens*
 5 *For Better Forestry v. U.S. Dep’t of Agr.*, 567 F.3d 1128, 1131–32 (9th Cir. 2009);
 6 and then citing *Carbonell v. I.N.S.*, 429 F.3d 894, 901 (9th Cir. 2005)).)

7 Plaintiffs filed the instant Motion on August 12, 2024, requesting that the
 8 Court incorporate the parties’ settlement agreement into an order and retain ancillary
 9 jurisdiction to enforce the settlement agreement. (See Mot. at 6.) Defendants filed
 10 their Memorandum in Opposition (“Response”) on September 9, 2024, to which
 11 Plaintiffs timely replied. (See Doc. 73, (“Resp.”); Doc. 74, Reply.)

12 **II. LEGAL STANDARD & ANALYSIS**

13 Under the doctrine of ancillary jurisdiction, “a federal court *may exercise* ancillary
 14 jurisdiction over collateral proceedings . . . to enforce a settlement agreement.” *K.C. ex rel.*
 15 *Erica C. v. Torlakson*, 762 F.3d 963, 965 (9th Cir. 2014) (emphasis added). However,
 16 contrary to Plaintiffs’ assertion, “[f]ederal courts ‘have no *inherent* power to enforce
 17 settlement agreements entered into by parties litigating before them.’” *Id.* at 967 (emphasis
 18 added) (quoting *Arata v. Nu Skin Int’l, Inc.*, 96 F.3d 1265, 1268 (9th Cir. 1996)); (see Mot.
 19 at 7.) Rather, to establish ancillary jurisdiction over a settlement agreement, a court must
 20 either incorporate the agreement into its order of dismissal or include a provision in its
 21 dismissal order “retaining jurisdiction” over the agreement. *Kokkonen v. Guardian Life Ins.*
 22 *Co. of Am.*, 511 U.S. 375, 381–82 (1994). In addition, “a district court [is] under no
 23 obligation to reserve such jurisdiction in the first place.” *Arata*, 96 F.3d at 1269.

24 Plaintiffs assert that several provisions of the settlement agreement establish a
 25 shared intent by the parties for the Court to assert jurisdiction to enforce the agreement.
 26 (See *id.* at 6–8.) However, “[t]he parties have no power to confer jurisdiction on the district
 27 court by agreement or consent.” *Morongo Band of Mission Indians v. Cal. State Bd. of*
 28 *Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988). And absent incorporation or retention

1 of jurisdiction, a dispute about the terms of a private settlement agreement is contractual in
 2 nature.¹ *Kokkonen*, 511 U.S. at 381; *Kelly v. Wengler*, 822 F.3d 1085, 1094 (9th Cir. 2016)
 3 (“[A] dispute arising under a settlement agreement is ‘a separate contract dispute requiring
 4 its own independent basis for jurisdiction.’” (citation omitted)).

5 Plaintiffs’ arguments about the “grounds for judicial refusal to approve a settlement”
 6 are also inapposite. (Mot. at 8–10.) First, the cited “criteria that apply to whether there
 7 should be judicial approval of a proposed Order” pertain to a district court’s decision to
 8 approve or reject a proposed consent decree. (Mot. at 8 (first quoting *United States v.*
 9 *Lexington-Fayette Urb. Cnty. Gov’t*, 591 F.3d 484, 489 (6th Cir. 2010); and then quoting
 10 *United States v. City of Miami*, 664 F.2d 435, 440 n.13 (Former 5th Cir. Dec. 1981) (en
 11 banc) (Rubin, J., concurring).) Such “criteria” do not bear on the Court’s discretion
 12 regarding the incorporation of a settlement agreement. (Mot. at 8.) Second, the out-of-court
 13 settlement at issue here is not an “equitable decree” subject to Rule 65(d) because it is not
 14 an order issued by the Court, let alone an injunction. (Mot. at 9.); *see* Fed. R. Civ. P.
 15 65(d)(1) (detailing rules regarding to the contents of injunctions and restraining orders).

16 **III. CONCLUSION**

17 For the reasons stated above, the Court denies Plaintiffs’ Motion to Incorporate
 18 Settlement Agreement In Order and for Retention of Jurisdiction.

19 Because the parties previously agreed that Plaintiffs would dismiss this case with
 20 prejudice within 15 days of receipt of any payments for attorneys’ fees (Doc. 50) and
 21 because this Court denied Plaintiffs’ Motion for Attorneys’ Fees on July 30, 2024, the
 22 Court will dismiss this case with prejudice.

23 **IT IS ORDERED** denying Plaintiffs’ Motion to Incorporate Settlement Agreement
 24 In Order and for Retention of Jurisdiction (Doc. 70).


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27 ¹ Plaintiffs’ arguments about the “Court’s oversight and jurisdiction” constituting
 28 “essential terms” of the agreement “without which the Parties have no settlement” are
 unpersuasive for these same reasons. (Mot. at 10–11.)

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2 **IT IS FURTHER ORDERED** dismissing this case with prejudice.
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4 Dated this 24th day of January, 2025.
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9 Susan R. Bolton
United States District Judge
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